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Contract Flooring Systems, Inc. and District Council of Painters No. 16, International Union of Painters and Allied Trades, AFL-CIO. Case 32-CA-18602

June 29, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On December 26, 2001, Administrative Law Judge Mary Miller Cracraft issued the attached decision. The Respondent and the Charging Party Union filed exceptions and supporting briefs, and the General Counsel filed cross-exceptions and a supporting brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified below.²

The judge found that in a letter dated May 31, 2000, the Union requested information that was relevant to its belief that an alter ego relationship existed between the Respondent and a nonunion company, Majestic Floors, and that bargaining unit work was unlawfully being diverted to Majestic Floors. Accordingly, by refusing to provide the information, the judge found that the Respondent violated Section 8(a)(5) and (1). We agree, but for differing reasons.

As the judge correctly noted, this case involves non-unit information that is not presumptively relevant to a union's representational duties. Thus, the union must demonstrate a reasonable objective basis for believing that an alter ego relationship exists. *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). Board law holds that "the requesting union need not inform the signatory employer of the factual basis for its requests, but need only indicate the reason for its request." *Corson & Gruman Co.*, 278 NLRB 329, 334 (1986), enfd. 811 F.2d

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² As requested by the General Counsel and the Union in their exceptions, we shall delete from the Order and notice the provision that information be furnished to the Union "on request." *I & F Corp.*, 322 NLRB 1037 fn. 1 (1997).

1504 (4th Cir. 191987). In its May 31 letter, the Union stated the reason for its request, i.e., its belief that there was an alter ego relationship between the Respondent and Majestic Floors. Under *Corson*, supra, there was no need to spell out the factual basis for that belief.

Applying that precedent, Member Liebman finds that by refusing to provide the requested information on and after June 7, the Respondent violated Section 8(a)(5) and (1). Chairman Battista and Member Schaumber would find the violation on a later date. They do not necessarily agree with Board precedent that a union can simply state a reason for its request. They note the standard set forth by the Third Circuit in *Hertz Corp. v. NLRB*, 105 F.3d 868, 874 (3d Cir. 1997), which requires a union "to do more than state the reason and/or authority for its request for information." It must, instead, "apprise [an employer] of facts tending to support" its request for non-unit information by communicating those facts to the employer in its information request. (Emphasis in original.) The Union met this standard, but not until the hearing when it apprised the Respondent of the facts underlying its belief that there was an alter-ego relationship. Upon the Union's renewed request, the Respondent still refused to provide the requested information. Chairman Battista and Member Schaumber find it unnecessary to resolve the disagreement between the Board and the court. For, even under the court's test, an 8(a)(5) violation occurred after the facts were revealed. *Z-Bro, Inc.*, 300 NLRB 87, 90 (1990), enfd. 950 F.2d 726 (8th Cir. 1991); *Ohio Power Co.*, 216 NLRB 987, 990 fn. 9 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976). This change in the date of the violation has no effect on the remedy. The Respondent will be ordered to furnish the Union the information requested.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Contract Flooring Systems, Inc., Bay Point, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Furnish to the Union the information requested by the Union in the letter dated May 31, 2000, set forth in appendix A to the judge's decision."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. June 29, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS
APPENDIX B
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with District Council of Painters No. 16, International Union of Painters and Allied Trades, AFL-CIO by refusing to supply it with the information it requested regarding a potential alter ego relationship with Majestic.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union in a timely fashion the information requested.

CONTRACT FLOORING SYSTEMS, INC.

Judith J. Chang, Esq., for the General Counsel.

Joseph P. Ryan, Esq., of San Francisco, California, for the Respondent.

David A. Rosenfeld, Esq., of Oakland, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARY MILLER CRACRAFT, Administrative Law Judge. The issue in this case is whether Contract Flooring, Inc. (Respondent) failed to furnish District Council of Painters No. 16, International Union of Painters and Allied Trades, AFL-CIO¹ (the Union) with requested information relevant to its statutory duties and responsibilities.² Specifically, by letter of May 31, 2000, the Union sent Respondent a 79-item request for information dealing with any connection between Majestic Floors, Inc. (Majestic) and Respondent.

All parties were afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue the merits of their respective positions. On the entire record, including my observation of the demeanor of the witnesses, and after considering the oral argument of counsel for the General Counsel and counsel for the Union as well as briefs filed by counsel for the Union and for Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

Respondent, a California corporation, is engaged in installation of commercial flooring products. During the 12-month period ending April 3, 2001, Respondent annually sold and shipped goods or provided services valued in excess of \$50,000 directly to customers or business enterprises who themselves met one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standards. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act. Carpet, Linoleum and Soft Tile Workers Local 12, International Union of Painters and Allied Trades, AFL-CIO (Local 12) is a local union affiliated with the Union. Respondent admits and I find that Local 12 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The parties stipulated that, "since at least July 1, 1999, and at all times material herein, the Union has been the designated collective-bargaining representative of the employees in the unit."³ The parties further stipulated that since July 1, 1999,

¹ The name of the Union was corrected at the hearing.

² This case was tried in Oakland, California, on November 6, 2001. The charge was filed by the Union on December 4, 2000, and the complaint was issued April 3, 2001.

³ The unit consists of employees who perform work relating to the installation of floor coverings. The precise unit description is speci-

“the Union has been recognized as such representative by Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period July 1, 1999, through June 30, 2002.”

In March 2000, the Union’s director of service, Douglas Christopher, learned that on several union projects, a company known as Majestic Floors was performing floor-covering work on a nonunion basis. Christopher, who had been director of services for 2 years prior to the hearing, had not previously heard of Majestic Floors. Christopher ascertained that Majestic Floors was not a union firm by consulting a log of signatory union companies. Majestic’s name did not appear on that list.

Business Agents John Sherack, Rick Foley, and Kevin Chase reported to Christopher that in March 2000 Majestic Floors appeared on subcontractors’ lists on particular projects that were otherwise 100 percent union jobs. Christopher told the business agents to monitor the situation. The business agents reported back that pursuant to jobsite visits and interviews they conducted in March 2000 and thereafter, no one from Majestic Floors arrived to perform the work on these particular jobsites. Rather, employees of Respondent, who were members of the Union, were performing the work awarded to Majestic Floors.

By letter of March 20, 2000, Christopher wrote Respondent’s vice president Robert A. Vieira that the Union was aware of Respondent’s subcontracting relationship with a nonsignatory flooring contractor including work covered by the parties’ collective-bargaining agreement. Christopher asserted that Respondent’s actions were a breach of section VI (b) of the parties’ contract and requested that Respondent cease this activity. Further, Christopher asserted that failure to cease such activity would result in pursuit of economic remedies through the grievance process.

Subsequently, business agents of the Union gathered information and documentation and made weekly reports to Christopher regarding Majestic Floors’ performance of work on various union jobsites. They also interviewed employees performing the work.

Specifically, Business Representative/Organizer Gary Martin provided Christopher with a list of subcontractors for Turner Construction, a union general contractor, on the Buzzsaw.com project at 235 Montgomery Street, fourth and fifth floors, in San Francisco. This document, which announced a mandatory job start meeting for Tuesday, March 21, 2000, listed Majestic Floors as the subcontractor for floor covering. Jim Marinello was listed as Majestic Floors’ contact. The phone number listed was (925) 825-0771. The fax number is difficult to read. It is clear that the area code is 925. The first three numbers are either 803 or 603. The last four numbers are either 6220 or

Another document provided by a business agent was for Sony Music, tenant improvement, at Ninth and Howard in San Francisco. The carpet and resilient floors subcontractor listed was Majestic Floors, Inc., 5111 Port Chicago, Hwy., Concord,

California 94520. Vince Steele was listed as Majestic Floors’ contact and the phone and fax numbers listed were (925) 825-0771; (925) 603-6288.

A third document listed subcontractors of union general contractor Cahill Construction for the Jewish Family and Children’s Center at Scott and Post Streets in San Francisco. Under the heading “Flooring—Carpet & Resilient,” Majestic Floors was listed as subcontractor. The contact listed was Rob Vieira, 5111 Pt. Chicago Hwy., Concord, California; (925) 825-0771; fax (925) 603-6288.

Business Agent Kevin Chase obtained a copy of a subcontract between union general contractor Hathaway Dinwiddie and Majestic Floors, Inc. for a project for Thelen, Reid & Priest, 101 Second Street, third floor, San Francisco, job #35131-11 for carpet, tile, and base. This subcontract was dated April 28, 2000. Majestic Floors, Inc. was listed at 5111 Port Chicago Highway, Concord, California 94520; (925) 825-0771; fax (925) 603-6288. Chase also reported to Christopher, based on his interviews, that the work was performed by Respondent’s employees.

Christopher relied on these documents and weekly reports from business agents to file the Union’s initial grievance against Respondent. This grievance, dated May 8, 2000, alleged that Respondent violated section VI (b) of the Master Agreement by failing to cease its subcontracting relationship with Majestic Floors. A second grievance, filed May 23, 2000, alleged violation of section VI (b) by Respondent’s failure to cease its subcontracting relationship with Majestic Floors on the Thelen, Reid & Priest Project. Christopher based this grievance on the Hathaway Dinwiddie Construction documents.

According to Christopher, shortly after May 23, 2000, he spoke with Robert Vieira, vice president of Respondent. As Christopher testified, after many unsuccessful attempts to reach Vieira through Respondent’s phone number, he was told by an individual who answered Respondent’s phone to try another number, which Christopher then called. This number was answered “Majestic Floors.” Christopher asked for Vieira and was told to “please hold.” Vieira answered and Christopher asked if Vieira had received the grievances. Vieira replied that he had and he disagreed with the assertions in the grievances. He told Christopher that he was referring the matter to legal counsel.

Based on the circumstances he encountered in reaching Vieira by phone as well as the other evidence outlined above, Christopher accessed the web site of the State Contractors’ License Board and obtained the license numbers for Respondent and Majestic. Respondent’s personnel list on the web site indicated Gerald Robert Steele, RME; Vincent Lee Steele, treasurer; Gabriel Espindola, vice president; Kristy Leigh Espindola, secretary; Tina Marie Steele Sorensen, president; Robert A. Vieira, vice president; and Arnold Richard Alspaw, vice president. Majestic Floors had a separate contractor’s license number according to this web site. The personnel list indicated Vincent Lee Steele, RMO/P; Kristy Leigh Espindola, S/T. The web site indicated that both companies’ licenses were current and active for “C15 Flooring and Floor Covering” and that separate contractor’s bonding had been obtained from Surety Company of the Pacific by both companies and separate

cally set forth in sec. 1 of the Master Agreement between the Central Coast Counties, Northern California Floor Covering Associations Independent Floor Covering Employers and the Union effective July 1, 1999, through June 30, 2002. Respondent signed this agreement on February 23, 2000.

workers compensation insurance had been obtained from Golden Eagle Insurance Corporation by both companies.

Christopher also obtained Respondent's and Majestic's articles of incorporation. Both are California corporations. Respondent's address is listed on the statement as 183 Bella Vista, Bay Point, California 94565. Majestic Floors' address is listed as 5111 Port Chicago Highway, Concord, California 94520. Officers of Respondent are listed as Tina Steele, CEO; Kristy Espindola, secretary; and Vincent Steele, chief financial officer. Incumbent directors for Respondent are listed as Tina Steele, Kristy Espindola, Vincent Steele, Gabriel Espindola, Arnold Richard Alspaw, James Marinello, and Robert Vieira. Officers for Majestic Floors are listed as Vince Steele, CEO; Kristy Espindola, secretary and chief financial officer. Directors are listed as Vince Steele and Kristy Espindola.

Based on all of this information, Christopher concluded that Respondent and Majestic Floors were very closely related. Christopher called Union Attorney David Rosenfeld around May 23–31, 2000, and relayed the information and his concerns. Rosenfeld sent an information request to Vieira at Respondent's address dated May 31, 2000, seeking 79 separately listed items.⁴ None of the requested information has been provided.

By letter of June 7, 2000, to Rosenfeld from the attorney for Respondent, Joseph P. Ryan, Respondent requested that the Union provide the basis for its suggestion that Respondent set up an alter ego or double-breasted company to avoid the union contract. Ryan stated that he was attempting to ascertain whether the information request was made in good faith. Ryan also stated that he did not represent Majestic Floors and suggested that Rosenfeld contact that company directly.

The Union subsequently grieved Respondent's failure to cease its subcontracting relationship with Majestic Floors on the Goodby Silverstein & Partners project located at 717 California Street, San Francisco; and the Putnam, Lovell, Begauard & Lhort project at 101 California Street, San Francisco.

Article XXXII (c) of the parties' agreement provides in relevant part that,

If the Employer performs on site construction work of the type covered by this Agreement, under its own name or the name of another . . . wherein the employer . . . exercises . . . management, control, or majority ownership, the terms and conditions of this Agreement shall be applicable to all such work.

Christopher asserted that he needed the information requested in Rosenfeld's letter of May 31, 2000, not only to support his existing grievances but also to determine whether an additional grievance pursuant to article XXXII (c) should be filed.

Vieira has been a project manager for Majestic Floors for 11 years. He is also an officer of Respondent. Upon receiving the May 31, 2000 information request from Rosenfeld, he determined that some of the information would have to come from

Majestic Floors. Vieira contacted Vince Steele, president of Majestic Floors, and asked if Steele would be willing to furnish the information. According to Vieira, Steele declined. Vieira acknowledged that there has been a subcontracting relationship between Respondent and Majestic Floors since 1994, when Respondent was founded. Vieira was aware of a prior information request from the Union in 1997, which also was based on an assertion that Respondent and Majestic Floors were alter egos. Christopher testified that he was unaware of this prior information request.

Analysis

On request, an employer must provide a union with relevant information necessary to enable it to effectively represent employees under the terms of a collective-bargaining agreement. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). In *Acme*, the Court endorsed the Board's broad discovery-type standard for determining what information is relevant. *Id.* at 437. Under this discovery type standard, the union must demonstrate only a "probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Public Service Electric & Gas Co.*, 323 NLRB 1182, 1186 (1997), *enfd.* 157 F.3d 222 (3d Cir. 1998).

Information concerning employees covered by the collective-bargaining agreement is considered presumptively relevant. *Sheraton Hartford Hotel*, 289 NLRB 463 (1988). Information regarding the existence of an alter ego or double-breasted operation is not presumptively relevant. *C.E.K. Industrial Mechanical Contractors*, 295 NLRB, 635, 637 (1989), *enf. denied* on other grounds 921 F.2d 350 (1990). In order to establish the relevance of such information, the union must demonstrate a reasonable objective basis for believing that an alter ego or double-breasted relationship exists. *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994) ("a reasonable belief supported by objective evidence"); *Brisco Sheet Metal*, 307 NLRB 361 (1992), *relied on by counsel for the General Counsel* ("reasonable basis for believing"); *Blue Diamond Co.*, 295 NLRB 1007 ("an objective factual basis . . . to believe"). It is unnecessary for a union to prove that the information upon which it bases its belief is "accurate, non hearsay, or even ultimately reliable." *Boyers Construction Co.*, 267 NLRB 227, 229 (1983); see also *Magnet Coal*, 307 NLRB 444 *fn.* 3 (1992), *enfd.* 81 F.3d 71 (D.C. Cir. 1993) (*relied on by counsel for the General Counsel*).

On the record as a whole, I find that counsel for the General Counsel has presented credible evidence that the Union had a reasonable objective basis for believing that an alter ego or double-breasted relationship existed between Respondent and Majestic Floors. Christopher learned that Majestic Floors, a nonunion entity, was appearing on subcontractor lists on union jobs. He learned that union employees of Respondent were performing the work for Majestic Floors on these projects. In attempting to reach Vieira by phone, Christopher was referred by an individual who answered Respondent's telephone to another telephone number, which was answered, "Majestic Floors." Christopher was successfully connected to Vieira, Respondent's vice president, at the "Majestic Floors" number.

⁴ The information request is set forth at appendix A. As noted by counsel for the Union, the information request is substantially identical to the information request in *Construction Labor Unlimited*, 312 NLRB 364, 369–371 (1993), *enfd.* 41 F.3d 1501 (2d Cir. 1994), appendix A.

Christopher discovered by obtaining articles of incorporation and contractors license information that Respondent and Majestic Floor shared common officers and directors. Based on these factors, I find that a reasonable objective basis for believing that the two entities were alter egos or double-breasted entities existed.

Relying on *Pittston Coal Group*, 334 NLRB 690 (2001), Respondent argues that it is under no duty to compel another company to provide answers to the Union's information request. This is an uncontested assertion. Certainly, the General Counsel does not request such a remedy. Jurisdiction over Majestic Floors has not been sought. No alter ego or double-breasted allegations were litigated in this case. In other words, the merits of the Union's alter ego and double-breasted assertions are not at issue in this case.

More importantly, however, this argument overlooks the fact that Respondent itself has provided absolutely no information and provided no explanation for its failure to do so. Any remedy in this case will run to Respondent and Respondent must make a reasonable effort to produce the requested information or, if it is not available, explain the reasons for its unavailability. *Rochester Acoustical Corp.*, 298 NLRB 558, 563 (1990).

Moreover, *Pittston Coal Group* is clearly distinguishable. The request for information in *Pittston Coal Group* was not based on a belief regarding an alter ego or double-breasted relationship. The two companies were not alleged or shown to have anything other than an arm's-length relationship. Under the circumstances of that case, the Board found the company's good-faith attempt to obtain the information from its subcontractor satisfied its bargaining relationship. Because the information request in this case is based on a reasonable objective basis for believing that the two entities are alter egos or double-breasted entities, Respondent must provide information in its possession as well as information it can likely obtain from another company with which it has some relationship. Finally, Respondent asserts that the information request was merely harassment by the Union. Respondent claims that in 1997 the Union sought the identical information from Respondent. According to Respondent, the Union knew that it has had a subcontracting relationship with Majestic Floors since 1994 and there is no need for another information request. These assertions do not rebut the presumption of good faith of an information request for relevant and necessary information based on a reasonable objective basis. See, e.g., *International Paper Co.*, 319 NLRB 1253, 1266 (1995), enf. denied 115 F.3d 1045 (D.C. Cir. 1997). Moreover, where the union demonstrates a legitimate need for the information, the fact that other reasons for the request may have existed is irrelevant. *Central Manor Home for Adults*, 320 NLRB 1009, 1011 (1996), and cases cited therein.

The Union has shown the relevance of the information sought. Respondent's conclusory assertion that such information is unavailable need not be accepted. *Arch of West Virginia*, 304 NLRB 1089 fn. 1 (1991). Indeed, on cross-examination, Vieira admitted that he knew the answers to virtually all of the information requested from Respondent and knew some of the information requested from Majestic Floors. It is, moreover,

difficult from a logical point of view to credit Vieira's vague, self-serving testimony regarding a conversation with Vince Steele in which he asked Steele if Steele would be willing to furnish the requested information on behalf of Majestic Floors and Steele replied that he would not. If Vieira was interested enough in responding to the information request to go to the trouble of seeking to get information not in his possession, it is difficult to understand why he did not provide information which was in his possession.

Counsel for the General Counsel has shown that the information requested by the Union was relevant and essential to the Union's duty to administer the collective-bargaining agreement. By failing to provide the information requested, Respondent violated Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By failing and refusing to provide the Union with the information requested by letter of May 31, 2000, Respondent has failed and refused to bargain collectively and in good faith with the representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, Respondent must furnish the Union with the information requested in the Union's letter of May 31, 2000, set forth in appendix A.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

The Respondent, Contract Flooring Systems, Inc., Concord, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the Union with the information requested by letter of May 31, 2000.

(b) In any like or related manner, interfering with restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish the Union within a reasonable time, the information requested in its letter of May 31, 2000, set forth in Appendix A.

(b) Within 14 days after service by the Region, post at its facility in Bay Point, California, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals for the Ninth Circuit."

by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 7, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated December 26, 2001, San Francisco, California

APPENDIX A

Dear Mr. Ryan:

This letter is written on behalf of District Council No. 16. We have obtained information which suggests that Contract Flooring Systems set up an alter ego or double breasted company to avoid the contract. In order for the District Council to evaluate this matter please provide the following information. The reference to "your" should be understood to be your client: Contract Flooring Systems. The non-union company referred to is called Majestic Floors Incorporated.

1. Describe the type of business in which your company engages.

Describe the type of business in which the non-union company engages.

2. Define the geographic area in which your company does business.

Define the geographic area in which the non-union company does business.

3. State the business address(es) and identify all office locations of your company.

State the business address(es) and identify all office locations of the non-union company.

4. Identify your company's post office box(es) by number and location. Identify the non-union company's post office box(es) by number and location.

5. Identify your company's business phone number(s) and directory listing(s). Identify the non-union company's business phone number(s) and directory listing(s).

6. Identify the banking institution, branch location, and account number of your company's bank account(s). Identify the banking institution, branch location, and account number of the non-union company's bank account(s). Identify the banking institution, branch location and account number of your company's payroll account(s) not identified above. Identify the banking institution,

branch location and account number of the non-union company's payroll account(s) not identified above.

8. Identify where and by whom your company's accounting records are kept. Identify where and by whom the non-union company's accounting records are kept.

9. Identify your company's principal accountant. Identify the non-union company's principal accountant.

10. Identify where and by whom your company's corporate records are kept. Identify where and by whom the non-union company's corporate records are kept.

11. Identify where and by whom your company's other business record books are kept. Identify where and by whom the non-union company's other business record books are kept.

12. Identify your company's principal bookkeeper. Identify the non-union company's principal bookkeeper.

13. Identify your company's principal payroll preparer. Identify the non-union company's principal payroll preparer.

14. Identify your company's contractor license number for states where it does construction business. Identify the non-union company's contractor license number for states where it does construction business.

15. Identify the carrier and policy number for your company's workers compensation insurance.

Identify the carrier and policy number for the non-union company's workers compensation insurance.

16. Identify the carrier and policy number for your company's other health insurance programs(s). Identify the carrier and policy number for the non-union company's other health insurance programs(s).

17. (a) Identify your company's federal tax payer identification number. Identify the non-union company's federal tax payer identification number.

(b) Identify where and by whom your company's other federal or state tax reports are kept.

Identify where and by whom the non-union company's other federal or state tax reports are kept.

18. (a) Identify your company's other federal or state tax-payer identification numbers. Identify the non-union company's other federal or state taxpayer identification numbers.

(b) Identify where and by whom your company's other federal or state tax reports are kept.

Identify where and by whom the non-union company's other federal or state tax reports are kept.

19. Identify amount(s) involved, reason(s) for, and date(s) of transfer of any funds between your company and the non-union company.

20. Identify source(s) and amount(s) of your company's line(s) of credit.

Identify source(s) and amount(s) of your non-union company's line(s) of credit.

21. Identify amount(s) involved and date(s) when your company has operated its capital with a guarantee of performance by the non-union company.

Identify amount(s) involved and date(s) when the non-union company has operated its capital with a guarantee of performance by your company.

22. Identify business(es) to whom your company rents, leases, or otherwise provides office space.

Identify business(es) to whom the non-union company rents, leases or otherwise Provides office space.

23. Identify the calendar period and terms by which your company provides office space to the non-union company, or is provided with office space by the non-union company.

24. Identify your company's building and or office suppliers.

Identify the non-union company's building and or office suppliers.

25. Identify by item(s) purchased, date(s) of purchase, and dollar volume of purchase(s) those building and or office supplies not purchased separately by your company and the non-union company.

26. Identify business(es) that use your company's (a) tools or (b) equipment.

Identify business(es) that use the non-union company's (a) tools or (b) equipment.

27. Identify business(es) to whom your company sells, rents, or leases its (a) operating equipment, (b) office equipment, (c) construction equipment, or (d) tools.

Identify business(es) to whom the non-union company sells, rents, or leases its (a) operating equipment, (b) office equipment, (c) construction equipment, or (d) tools.

28. Identify business(es) from whom your company buys, rents, or leases its equipment.

Identify business(es) from whom the non-union company buys, rents, or leases its equipment.

29. Identify those equipment transactions that your company arranges by written agreement.

Identify those equipment transactions that the non-union company arranges by written agreement.

30. Regarding equipment transactions between your company and the non-union company, identify the purchase, rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.

31. Regarding equipment transactions between your company and business(es) separate from the non-union company, identify the purchase, rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.

32. Regarding equipment transactions between the nonunion company and business(es) separate from your company, identify the purchase, rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.

33. Identify those of the following services that are provided to the non-union company by or at your company.

- (a) administrative
- (b) bookkeeping
- (c) clerical
- (d) detailing

- (e) drafting
- (f) engineering
- (g) estimating
- (h) managerial
- (i) patternmaking
- (j) sketching
- (k) other

34. Identify those of the following services that are provided to your company by or at the non-union company.

- (a) administrative
- (b) bookkeeping
- (c) clerical
- (d) detailing
- (e) drafting
- (f) engineering
- (g) estimating
- (h) managerial
- (i) patternmaking
- (j) sketching
- (k) other

35. Identify where your company advertises for customer business.

Identify where the non-union company advertises for customer business.

36. Identify your company's customers.

Identify the non-union company's customers.

37. Identify customers your company has referred to the non-union company.

Identify customers the non-union company has referred to your company.

38. What customers of the non-union company are now or were formerly customers for your company.

39. Regarding customers identified above as common to your company and the non-union company, state the calendar period and dollar volume of work performed for the customer by your company.

Regarding customers identified above as common to your company and the non- union company, state the calendar period and dollar volume of work performed for the customer by the non-union company.

40. State the dollar volume of business per job performed by your company.

State the dollar volume of business per job performed by the non-union company.

41. Does your company negotiate jobs to obtain work?

Does the non-union company negotiate jobs to obtain work?

42. Does your company bid jobs to obtain work?

Does the non-union company bid jobs to obtain work?

43. Identify those persons who bid and or negotiate your company's work.

Identify those persons who bid and or negotiate the non-union company's work.

44. State the dollar volume minimum and or maximum (if any) as established by law or regulation, that your company may bid on public works projects.

State the dollar volume minimum and or maximum (if any) as established by law or regulations, that the non-union company may bid on public works projects.

45. Identify by customer, calendar period, and dollar volume any job(s) on which your company and the non-union company have bid competitively.

46. Identify by customer, calendar period, and dollar volume any work which your company has subcontracted to, or received by subcontract from the non-union company.

47. Identify subcontract work arranged by written agreement between your company and the non-union company.

48. State the reason for each subcontract let by your company.

State the reason for each subcontract let by the non-union company.

49. Identify by customer, calendar period, and dollar volume any project on which your company has succeeded, or been succeeded by, the non-union company.

50. Identify work your company performs on the non-union company's products.

Identify work the non-union company performs on your company's projects.

51. Identify where your company advertises for employee hires.

Identify where the non-union company advertises for employee hires.

52. Identify by job title or craft position the number of employees employed by your company per pay period.

Identify by job title or craft position the number of employees employed by the non-union company per pay period.

53. Identify the skills that your company's employees possess.

Identify the skills that the non-union company's employees possess.

54. Identify where your company's employees report for work.

Identify where the non-union company's employees report for work.

55. Identify by job title or craft position and respective employment dates those employees of your company who are or have been employees at the non-union company.

56. Identify by job title or craft position and respective employment dates those employees of the non-union company who are or have been employees at your company.

57. Identify by job title or craft position and transfer dates those employees otherwise transferred between your company and the non-union company.

58. Identify projects of each company on which those employees were working at the time of the transfer.

59. Identify your company's (a) supervisors, (b) job superintendents, and (c) forepersons or other supervisory persons with authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsible to direct employees, or to

adjust their grievances, or effectively to recommend such action.

Identify the non-union company's (a) supervisors, (b) job superintendents, and (c) forepersons or other supervisory persons with authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsible to direct employees, or to adjust their grievances, or effectively to recommend such action.

60. Regarding those supervisory persons described above as common to your company and the non-union company, identify the period(s) of employment with each company.

61. Identify your company's personnel ever authorized to supervise the non-union company's employees. Identify the non-union company's personnel ever authorized to supervise your company's employees.

62. Identify by project involved, personnel involved, and date of event, any occasion when your company's personnel performed a supervisory function for the non-union company.

Identify by project involved, personnel involved, and date of event, any occasion when the non-union company's personnel performed a supervisory function for your company.

63. Identify your company's managerial personnel having authority to formulate and effectuate management policies or otherwise able to recommend or to exercise discretionary action with or even independently of established policy.

Identify the non-union company's managerial personnel having authority to formulate and effectuate management policies or otherwise able to recommend or to exercise discretionary action with or even independently of established policy.

64. Identify your company's representatives who have authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline supervisory personnel, or responsible to direct supervisory personnel, or to adjust their grievances, or effectively to recommend such action.

Identify the non-union company's representative who have authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline supervisory personnel, or responsible to direct supervisory personnel, or to adjust their grievances, or effectively to recommend such action.

65. Identify your company's representatives otherwise actively involved with day-to-day management or operations. Identify the non-union company's representatives otherwise actively involved with day-to-day management or operations.

66. Identify by title and respective dates of employment those managerial personnel of your company ever employed by the non-union company.

Identify by title and respective dates of employment those managerial personnel of the non-union company ever employed by your company.

67. Describe your company's compensation program including employee wage rates.

Describe the non-union company's compensation program including employee wage rates.

68. Describe your company's fringe benefits program.

Describe the non-union company's fringe benefits program.

69. Describe your company's labor relations policy.

Describe the non-union company labor relations policy.

70. Identify your company's representative(s) who establish or otherwise control labor relations policy.

Identify the non-union company's representative(s) who establish or otherwise control labor relations policy.

71. Identify your company's labor relations representative(s).

Identify the non-union company's labor relations representative(s).

72. Identify your company's legal counsel on labor relations matters.

Identify the non-union company's legal counsel on labor relations matters.

73. Identify your company's membership status in the Associated General Contractors.

74. Identify your company's membership status in any other employer association.

Identify the non-union company's membership status in any other employer association.

75. Identify your company's officers.

Identify the non-union company's officers.

76. Identify your company's directors.

Identify the non-union company's directors.

77. Identify place(s) and date(s) of your company's directors meetings.

Identify place(s) and date(s) of the non-union company's directors meetings.

78. Identify your company's owners and or stockholders.

Identify the non-union company's owners and or stockholders.

79. Identify the ownership interest held among your company's owners and or stockholders.

Identify the ownership interest held among the non-union company's owners and or stockholders.

Sincerely,

David A. Rosenfeld

APPENDIX B

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not WE WILL NOT refuse to bargain collectively with District Council of Painters No. 16, International Union of Painters and Allied Trades, AFL-CIO by refusing to supply it with the information requested by letter of May 31, 2000.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request of the Union, furnish to it the information requested in its letter of May 31, 2000.

CONTRACT FLOORING SYSTEMS, INC.